

The Director of Central Intelligence

Washington, D.C. 20505

OGC 83-01934

16 MAR 1983

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

This letter transmits for the consideration of the Congress a proposed "Intelligence Authorization Act for Fiscal Year 1984."

To capitalize on the significant steps which the Executive and Legislative Branches have taken together toward revitalization of our nation's Intelligence Community, we must ensure sufficient resources in Fiscal Year 1984 to continue building the intelligence capabilities needed to meet the challenges of the late 1980s and beyond. I am confident that the Congress will provide the resources necessary to keep us firmly on the path of progress which we have charted together.

The proposed Intelligence Authorization Act is accompanied by a detailed section-by-section analysis. Timely consideration of the "Intelligence Authorization Act for Fiscal Year 1984" would be most welcome. The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the President's program.

Sincerely,



John N. McMahon

Acting Director of Central Intelligence

Enclosure

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- 1 - EXDIR
- 1 - D/OEXA
- 1 - ER
- 1 - General Counsel
- 1 - Comptroller
- ① - DDA
- 1 - DDO
- 1 - D/Pers

A BILL

To authorize appropriations for fiscal year 1984 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1984".

TITLE I - INTELLIGENCE ACTIVITIES

Authorization of Appropriations

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1984 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Intelligence Community Staff.
- (3) The Department of Defense.
- (4) The Defense Intelligence Agency.
- (5) The National Security Agency.
- (6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (7) The Department of State.
- (8) The Department of the Treasury.
- (9) The Department of Energy.
- (10) The Federal Bureau of Investigation.

Classified Schedule of Authorizations

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1984, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the committee of conference to accompany [] of the Ninety-Eighth Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

Personnel Ceiling Adjustments

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized under titles I and II of the Intelligence Authorization Act for Fiscal Year 1983 (Public Law 97-269) and title I of this Act when he determines that such action is necessary to the performance of important intelligence functions. Additional numbers of civilian personnel authorized by the Director of Central Intelligence under this section for an element of the Intelligence Community may not exceed 2 per centum of the number of civilian personnel authorized under such titles for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

Congressional Notification of Expenditures in Excess of Program Authorizations

SEC. 104. During fiscal year 1984, funds may not be made available for any activity for which funds are authorized to be appropriated by this Act unless such funds have been specifically authorized for such activity or, in the case of funds appropriated for a different activity, unless the Director of Central Intelligence or the Secretary of Defense has notified the appropriate committees of Congress of the intent to make such funds available for such activity.

Conduct of Intelligence Activities

SEC. 105. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

TITLE II - INTELLIGENCE COMMUNITY STAFF

Personnel

SEC. 201. (a) Personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1984, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1984, any officer or employee of the United States or member of the armed forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

Intelligence Community Staff Administered in Same
Manner as Central Intelligence Agency

SEC. 202. During fiscal year 1984, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403n) in the same manner as activities and personnel of the Central Intelligence Agency.

Appointment of an Officer of the Armed Forces as Director
or Deputy Director of the Intelligence Community Staff

SEC. 203. (a) If a commissioned officer of the armed forces is appointed as Director or Deputy Director of the Intelligence Community Staff, then --

(1) in the performance of his duties as Director or Deputy Director of the Intelligence Community Staff he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the military departments, or the armed forces, or any component thereof; and

(2) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director or Deputy Director of the Intelligence Community Staff) with respect to the military departments, or the armed forces, or any component thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(b) Except as provided in subsection (a) of this section, the appointment to the office of Director or Deputy Director of the Intelligence Community Staff of a commissioned officer of the armed forces and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving in the office of Director or Deputy Director of the Intelligence Community Staff, continue to hold rank and grade not lower than that in which he was serving at the time of his appointment and to receive the military pay and allowances (active or retired, as the case may be, including personal money allowance) payable to a commissioned officer of his grade and length of service for which the appropriate department shall be reimbursed from any funds available to defray the expenses of the Intelligence Community Staff. He also shall be paid by the Intelligence Community Staff from such funds an annual compensation at a rate equal to the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances.

(c) The rank or grade of any such commissioned officer shall, during the period in which such commissioned officer occupies the office of Director or Deputy Director of the Intelligence Community Staff, be in addition to the numbers and percentages otherwise authorized and appropriated for the armed force of which he is a member.

TITLE III - CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Authorization of Appropriations

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1984 the sum of \$86,300,000.

TITLE IV - ADMINISTRATIVE PROVISIONS RELATED TO
INTELLIGENCE AGENCIES

Eligibility for Appointment to Certain CIA Positions

SEC. 401. Section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f) is amended by striking the last "and" in subsection (d), by striking the period at the end of subsection (e) and substituting in lieu thereof "; and", and by adding at the end thereof the following new subsection:

"(f) Determine and fix the minimum and maximum limits of age within which an original appointment may be made to an operational position within the Agency, notwithstanding the provisions of any other law, in accordance with such criteria as the Director, in his discretion, may prescribe."

Eligibility for Incentive Awards

SEC. 402. (a) The Director of Central Intelligence may exercise the authority granted in section 4503 of title 5, United States Code, with respect to federal employees and members of the armed forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff, in the same manner as such authority may be exercised with respect to the personnel of the Central Intelligence Agency and the Intelligence Community Staff.

(b) The authority granted by subsection (a) of this section may be exercised with respect to federal employees or members of the armed forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff subsequent to five years preceding the date of enactment of this section.

Authority for Transfer of Funds to the State of Virginia

SEC. 403. The Central Intelligence Agency is authorized to transfer an amount not to exceed \$3,000,000 to the State of Virginia for the design and construction of highway improvements associated with construction at the Central Intelligence Agency headquarters compound.

TITLE V - INTELLIGENCE PERSONNEL PROTECTION

SEC. 501. Chapter 51 of title 18, United States Code, section 1114, is amended--

(a) by inserting "or attempts to kill" after "kills";

(b) by striking out "while engaged in the performance of his official duties or on account of the performance of his official duties" and inserting in lieu thereof "or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section"; and

(c) by inserting before the period at the end thereof a comma and the following: "except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

TITLE VI - GENERAL PROVISIONS

Increases in Employee Benefits Authorized by Law

SEC. 601. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

Compliance with Section 607 of P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974

SEC. 602. There are authorized to be appropriated for fiscal year 1985 such sums as may be necessary for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability Fund.

TITLE VII - DEPARTMENT OF DEFENSE ADMINISTRATIVE PROVISIONS

Department of Defense Undercover Intelligence Activities

SEC. 701. Subtitle A of title 10, United States Code, is amended by adding the following new chapter after chapter 18:

"CHAPTER 19. - INTELLIGENCE

"§391. Support for Intelligence Activities

- (a) The Department of Defense is authorized, in order to provide support for authorized and appropriately coordinated intelligence activities directed at objectives abroad --

- (i) to purchase property, buildings or other facilities and to lease space without regard to section 1341 of title 31, U.S.C., section 3732(a) of the Revised Statutes (41 U.S.C. 11 (a)), section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255), the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), section 3324 of title 31, U.S.C., section 3741 of the Revised Statutes (41 U.S.C. 22), and subsections (a) and (c) of section 304 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395; 41 U.S.C. 254 (a) and (c));
- (ii) to establish or acquire proprietary organizations such as corporations or other business entities and to operate them on a commercial basis, without regard to the provisions of section 304 of the Government Corporation Control Act (31 U.S.C. 9102), title 5 or Chapter 137 of title 10, United States Code, and related laws applicable to federal procurement;
- (iii) to deposit sums appropriated for the Department of Defense which are used for proprietary organizations, and the proceeds from such undercover intelligence activities, in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, U.S.C.; and
- (iv) to use deposits of and proceeds from such undercover activities to offset necessary and reasonable expenses incurred by a proprietary organization without regard to the provisions of section 3302 of title 31, U.S.C.

- (b) The activities described in subsection (a) of this section shall be conducted only upon the written certification of the Secretary of Defense, or the Secretary of a Military Department, or their respective designees at the Secretariat level, that any action authorized by subsection (a) of this section is necessary for the conduct of authorized intelligence activities.
- (c) Funds generated from activities authorized and carried out by a proprietary or a group of proprietaries created for a specific purpose under subsection (a) of this section, which are not necessary to accomplish that purpose, shall be deposited into the Treasury of the United States as miscellaneous receipts.
- (d) Unless the same or similar undercover intelligence activities are continued under a different proprietary cover, when a corporation or other business entity established or acquired as part of an undercover operation under paragraph (ii) of subsection (a) of this section is liquidated, sold, or otherwise disposed of, proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.
- (e) The Department of Defense shall ensure that appropriate annual financial reviews of proprietaries established or acquired pursuant to subsection (a) of this section are conducted."

**INTELLIGENCE AUTHORIZATION ACT FOR
FISCAL YEAR 1984**

**SECTION-BY-SECTION ANALYSIS
AND
EXPLANATION**

TITLE I

INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 1984.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1984 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 permits the Director of Central Intelligence in fiscal years 1983 and 1984 to authorize augmentation of the personnel ceilings of the various components of the Intelligence Community by an amount not to exceed 2% of their ceilings. The Director may exercise this authority only when necessary to the performance of important intelligence functions, and in appropriate consultation within the Executive Branch. Every instance of exercise of the authority must be reported promptly to the two intelligence committees of the Congress.

Section 104 requires that no funds may be appropriated or otherwise made available through transfer, reprogramming, etc., unless specifically authorized or accompanied by notification. It is understood that specifically authorized intelligence activities are those activities described in annual budget justification material as modified by the Congress. The notification requirement is not intended to apply to reprogrammings below agreed-to dollar thresholds, releases from authorized contingency funds, or to Economy Act transactions for specific activities otherwise authorized by law. Notification required under this provision is normally expected to be made at least fifteen days prior to completion of the funding transaction, but it is recognized that circumstances may occasionally require later notification.

Should questions arise as to the relationship between section 104 and section 501 of the National Security Act of 1947, it is expected that resolution will be guided by the principles of comity and mutual understanding set forth in the legislative history accompanying the statutory intelligence oversight provisions enacted in 1980.

Section 105 makes clear that, with the exception of any specific legislative authorities which may be contained in the Intelligence Authorization Act for Fiscal Year 1984, the Act is intended only to authorize appropriations and does not constitute authority for the conduct of any intelligence activity prohibited by the Constitution or laws of the United States.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201 provides for the staffing and administration of the Intelligence Community Staff.

Subsection (a) provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence and intelligence-related activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 202 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

Section 203 defines the consequences of appointment of a commissioned officer of the armed forces to the position of Director or Deputy Director of the Intelligence Community Staff. Section 203 provides the same consequences for appointment of a commissioned officer of the armed forces as Director or Deputy Director of the Intelligence Community Staff as subsection 102(b) of the National Security Act of 1947 (50 U.S.C. 403(b)) provides for appointment of such an officer as Director or Deputy Director of Central Intelligence.

Subsection (a) of section 203 provides that a commissioned officer of the armed forces appointed as Director or Deputy Director of the Intelligence Community Staff shall have authority in that position identical to that a civilian appointed to the position would have. Paragraph (1) of the subsection assures that a commissioned officer will, in the

performance of his duties as Director or Deputy Director of the Intelligence Community Staff, have the same independence from military control that a civilian would have in performing such duties. Paragraph (2) of the subsection assures that a commissioned officer shall, in the performance of his duties as Director or Deputy Director of the Intelligence Community Staff, exercise no greater authority over the military than he would have if he were a civilian.

Subsection (b) of section 203 provides that a commissioned officer appointed as Director or Deputy Director of the Intelligence Community Staff shall retain all rights and privileges which normally pertain to his military rank. The subsection also specifies the manner of payment of the salary and allowances of a commissioned officer appointed as Director or Deputy Director of the Intelligence Community Staff.

Subsection (c) provides that the rank or grade of a commissioned officer serving as Director or Deputy Director of the Intelligence Community Staff shall be in addition to the numbers and percentages of such rank or grade otherwise authorized for the armed service of which he is a member. This provision ensures that the armed service from which an officer is appointed as Director or Deputy Director of the Intelligence Community Staff will not by virtue of such appointment be deprived of an authorized senior officer billet necessary for effective military personnel management.

TITLE III

CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes fiscal year 1984 appropriations
for the Central Intelligence Agency Retirement and Disability
Fund.

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED TO
INTELLIGENCE AGENCIES

Section 401 amends section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f) to explicitly authorize the Central Intelligence Agency to establish age criteria for certain positions within the Agency for which operational necessities require such criteria. Enacting explicit authority for age criteria serves the goals of clarity and certainty of authority in CIA personnel administration. Similar authority exists for age criteria concerning appointment of federal air traffic controllers, firefighters, and law enforcement officers under 5 U.S.C. 3307.


The Central Intelligence Agency has a crucial ongoing need to attract and retain a core career group of highly motivated individuals who are capable of being trained in unique skills. The demands of overseas intelligence work require that these individuals have special combinations of age and experience. The stresses and strains of uneven and uncertain hours of work, of duty in unhealthy locations, and of arduous assignments performed under difficult and often dangerous conditions require personnel who possess vigor, vitality, and endurance, as well as emotional maturity. An operational career group with such physical and emotional characteristics is essential to the mission of the Agency. Section 401 is designed to permit establishment of age criteria for initial appointments to these kinds of positions within the Agency, for which such criteria are operational necessities; the provision does not authorize establishment of across-the-board general age criteria for employment with the Agency.

The language in section 401 conferring upon the Director of Central Intelligence the authority to establish age criteria is similar to the language conferring special termination authority upon the Director under subsection 102 (c) of the National Security Act of 1947 (50 U.S.C. 403(c)). The courts have uniformly held that such language confers upon the Director authority to be exercised in his exclusive discretion and that the exercise of such authority is not subject to review, judicially or otherwise.

Section 402 extends the authority of the Director of Central Intelligence to pay awards under section 4503 of title 5 in recognition of outstanding service, to include within the scope of that authority employees of other government agencies and members of the armed forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff. Under Section 4503, an agency head may pay such awards to employees, but it is not clear that this includes individuals detailed or assigned to the agency, particularly if they are

members of the armed forces. Due to the wide variety of knowledge and expertise required in the conduct of intelligence activities, and the multiplicity of federal departments and agencies in which the requisite knowledge and expertise may be found, the staffing complements of the CIA and the Intelligence Community Staff must consist in part of individuals detailed from other departments and agencies of the federal government, including the armed forces. Because these individuals can and do make valuable contributions to the accomplishment of the missions of the CIA and the Intelligence Community Staff, fairness requires that they be eligible for recognition on the same basis as permanent employees. Section 402 remedies an anomaly in existing law, and provides for limited retroactive applicability to remedy any unfortunate inequities which may have arisen in the past few years.

Section 403 authorizes the Central Intelligence Agency to transfer funds to the State of Virginia for the design and construction of highway improvements associated with construction at the CIA headquarters compound.



TITLE V

INTELLIGENCE PERSONNEL PROTECTION

Section 501 amends section 1114 of title 18, United States Code to provide federal criminal penalties for violent attacks on United States intelligence personnel. The provision is identical to the intelligence personnel protection provisions passed by both Houses of Congress in the 97th Congress as part of Title III of H.R. 3963, the "Violent Crime and Drug Enforcement Improvements Act of 1982." Although H.R. 3963 failed to receive the President's approval, the President's statement on the legislation said: "I completely support some of the features of H.R. 3963, such as the Federal Intelligence Personnel Protection Act."

Under the amendment to title 18 that section 501 of the Bill makes, the assault, kidnapping, or killing of intelligence personnel becomes a federal crime, extending to such personnel the same protection already given by the federal criminal code to a host of other federal employees, ranging from federal judges to the employees of the Federal Home Loan Bank Board. The federal government has a compelling interest in assuring the physical safety of the intelligence officers and employees of the United States. Crimes of violence directed at intelligence personnel would fall within the scope of the federal criminal code only if the officer or employee attacked were engaged in the performance of official duties at the time of the attack, or if the attack was made on account of the performance of official duties by the officer or employee. Violent acts directed at U.S. intelligence personnel as private individuals without any connection to their official duties would continue to be a matter for state and local authorities. In this context it should be noted that subsection 501(b) of the Bill strikes the phrase "while engaged in the performance of his official duties or on account of the performance of his official duties" from section 1114 of title 18 as surplus language. The deletion is a technical amendment which has no substantive effect since section 1114 subsequently provides that it applies only to violent attacks on an enumerated employee "engaged in or on account of the performance of his official duties."

Section 501 of the Bill also amends section 1114 of title 18 to define as an offense attempting to kill the federal personnel listed in that section, as well as succeeding in killing them. Under current federal law, if any of the federal personnel listed in section 1114 of title 18 is severely injured in a violent attack while performing his duties, but does not actually die from the attack, the attacker cannot be charged with any federal crime greater than assault under section 111 of title 18, which is punishable by three years imprisonment and/or a \$5,000 fine, or ten years imprisonment and/or a \$10,000 fine if the attacker used a deadly weapon. For a violent maiming of a

federal officer or employee performing his duties, an assault charge would result in too light a punishment for the attacker in relationship to the gravity of his criminal conduct, but, unless the victim dies, no greater crime could be charged. Section 501 of the Bill corrects this anomaly by providing attempted murder as an offense intermediate between assault and murder.

TITLE VI

GENERAL PROVISIONS

Section 601 authorizes appropriations for adjustments to federal employee compensation and to retirement and other benefits which are authorized by current or subsequently enacted law. This section obviates the need for separate authorizations for increases in such compensation or benefits during the fiscal year.

Section 602 authorizes such sums as may be necessary for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1985. This section brings the authorization process into compliance with section 607 of Public Law 93-344, the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 11c) which requires that appropriations be authorized in the calendar year prior to the year in which the fiscal year begins.

TITLE VII - DEPARTMENT OF DEFENSE ADMINISTRATIVE PROVISIONS

Section 701 adds a new chapter to subtitle A of title 10, United States Code, authorizing the acquisition or establishment of proprietary organizations such as corporations or other business entities to provide cover support for Department of Defense undercover intelligence activities without regard to a number of existing statutory restrictions.

Proposed subsection 391(a) states that all intelligence activities for which cover support will be provided will be properly authorized as provided by statute or Executive order and coordinated with the appropriate agency (CIA overseas, FBI domestically) pursuant to national directives and interdepartmental agreements. The language also provides that such proprietary entities shall be used only for intelligence activities directed at overseas objectives. Thus, while a proprietary entity may be established in the United States, its function would be to provide cover for foreign human intelligence collection, foreign counterintelligence operational activities, or lawfully approved special activities abroad. In those counterintelligence cases involving movement of targeted personnel to the United States, coordination control would pass to the FBI.

Proposed paragraph 391(a)(i) authorizes the Department of Defense to lease property when necessary for undercover foreign intelligence or counterintelligence activities and properly authorized special activities. Such activity requires exemption from certain listed statutes, specifically:

- 31 U.S.C. 1341 which prohibits contracting for longer than one year;

- 41 U.S.C. 11(a) which prohibits entering into a contract or purchasing without sufficient money having been appropriated for that purpose;
- 41 U.S.C. 255 which prohibits advance payments which exceed the unpaid price of any contract and prohibits any advance, partial, progress or other payment without adequate security;
- 40 U.S.C. 34 which prohibits leasing of a building or part of a building, in the District of Columbia without a specific congressional appropriation;
- 31 U.S.C. 3324 which prohibits advances of public money unless specifically authorized by law and also prohibits payment in excess of the value of a service or article prior to its receipt;
- 41 U.S.C. 22 which requires all U.S. Government contracts and agreements to contain an express condition that no Member of Congress shall be admitted to any share or part thereof, or to any benefit arising therefrom;
- 41 U.S.C. 254(a) which requires a warranty in all negotiated contracts that no commission, percentage, brokerage or contingent fee was paid to secure the contract;
- 41 U.S.C. 254(c) which requires a clause in all negotiated contracts permitting the Comptroller General access to all books, documents, papers and records of the contractor and its suppliers until three years after final payment.

The 31 U.S.C. 1341, 41 U.S.C. 11(a), 41 U.S.C. 255, 31 U.S.C. 3324 and 41 U.S.C. 254(a) prohibitions are incompatible with commercial contracting practices which are required to maintain the non-attributable cover essential to successful support for lawfully authorized foreign intelligence, counter-intelligence and special activities. The specific prohibition against leasing in the District of Columbia without a specific appropriation (40 U.S.C. 34) similarly unduly restricts corporate activity in a manner which could foreseeably hinder such operations locally. The 41 U.S.C. 22 requirement that contracts prohibit congressional monetary interests is inappropriate in a private commercial environment as is the requirement for access to books and records by the Comptroller General (41 U.S.C. 254(c)).

Proposed paragraph 391(a)(ii) authorizes the Department of Defense to establish, acquire and operate private business entities for intelligence purposes on a commercial basis and

specifically without regard to 31 U.S.C. 9102. In order to operate on a commercial basis such business entities would not be subject to title 5 personnel law requirements, or the procurement laws of chapter 137 of title 10.

Proposed paragraph 391(a)(iii) exempts the intelligence activities authorized by section 391 from the 31 U.S.C. 3302 restrictions against establishing bank accounts. Such commercial activity is necessary to operate a viable commercial business entity to serve as a cover. The criminal penalties of 18 U.S.C. 648 similarly are specifically stated as not applying insofar as the prohibition against establishing bank accounts is concerned.

Proposed paragraph 391(a)(iv) allows the use of any proceeds generated by a commercial proprietary entity for necessary and reasonable expenses incurred by it while providing cover for authorized undercover intelligence activities. A specific exception is provided to 31 U.S.C. 3302, which requires that all money received from any source be deposited in the U.S. Treasury without any deductions. This provision is required to assure that the cover of the business entities established is not jeopardized, to permit normal commercial administrative support activity, and to provide the operational flexibility needed to help ensure that the planned intelligence activities are accomplished as required.

Pursuant to subsection 391(b), all actions permitted by section 391(a) which would otherwise be prohibited by the statutes referred to therein may only be undertaken upon certification by the Secretary of Defense, or the Secretary of a Military Department, or their respective designees at the Secretariat level, that such actions are necessary to the conduct of authorized undercover intelligence activities. The certification is required to ensure a sufficiently high level of civilian oversight and accountability.

Proposed subsection 391(c) requires that funds generated by any business entity or entities established under the authority of section 391 which are not required for accomplishing the purpose for which the proprietary or proprietaries were created shall be deposited into the U.S. Treasury as miscellaneous receipts.

Proposed subsection 391(d) requires that the proceeds from the sale, liquidation or other disposition of a business entity established under section 391 be deposited in the U.S. Treasury as miscellaneous receipts after all debts, claims or other obligations have been resolved. The introductory language of this subsection is necessary to provide for situations such as those in which the sponsorship of a proprietary corporation becomes known, and it becomes necessary to reestablish that or a similar corporation in order to continue the undercover intelligence activity involved.

Proposed subsection 391(e) requires appropriate financial reviews to be conducted annually of all proprietaries established or acquired pursuant to subsection 391(a).

**INTELLIGENCE AUTHORIZATION ACT FOR
FISCAL YEAR 1984**

CHANGES IN EXISTING LAW

Note: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; new material is underscored.

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: Amounts authorized to be appropriated for the Intelligence Community Staff, and the authorized personnel ceilings for that organization, are now among those specified in the Classified Schedule of Authorizations.

Section 102: No substantive change.

Section 103: Provides authority for the Director of Central Intelligence to make minor increments in Intelligence Community personnel ceilings when necessary for the performance of important intelligence functions. Essentially similar in effect to section 402 of the fiscal year 1983 Act, which pertained only to the Central Intelligence Agency.

Section 104: No substantive change from section 103 of the fiscal year 1983 Act.

Section 105: No substantive change from section 701 of the fiscal year 1983 Act.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201: No substantive change from section 202 of the fiscal year 1983 Act.

Section 202: No substantive change from section 203 of the fiscal year 1983 Act.

Section 203: New provision.

TITLE III

CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY
SYSTEM

Section 301: \$86,300,000

TITLE IV

ADMINISTRATIVE PROVISIONS
RELATED TO INTELLIGENCE AGENCIES

Section 401: Makes the following changes in existing law:

* * * * *

Central Intelligence Agency Act of 1949 (50 U.S.C. 403f)

Sec. 5. In the performance of its functions, the Central Intelligence Agency is authorized to -- . . .

(d) Authorize personnel designated by the Director to carry ~~firearms~~ to the extent necessary for the performance of the Agency's authorized functions, except that, within the United States, such authority shall be limited to the purposes of protection of classified materials and information, the training of Agency personnel and other authorized persons in the use of firearms, the protection of Agency installations and property, and the protection of Agency personnel and of defectors, their families, and other persons in the United States under Agency auspices; [and]

(e) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor without regard to limitations on expenditures contained in the Act of June 30, 1932, as amended: Provided, That in each case the Director shall certify that exception from such limitations is necessary to the successful performance of the Agency's functions or to the security of its activities[.]; and

(f) Determine and fix the minimum and maximum limits of age within which an original appointment may be made to an operational position within the Agency, notwithstanding the provisions of any other law, in accordance with such criteria as the Director, in his discretion, may prescribe.

* * * * *

Section 402: New provision.

Section 403: New provision.

TITLE V

INTELLIGENCE PERSONNEL PROTECTION

Section 501: Makes the following changes in existing law:

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TITLE 18

§1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior, or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, or any officer or employee of the Veterans' Administration assigned to perform investigative or law enforcement

functions, [while engaged in the performance of his official duties, or on account of the performance of his official duties,] or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties shall be punished as provided under sections 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

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TITLE VI

GENERAL PROVISIONS

Section 601: No substantive change from section 702 of the fiscal year 1983 Act.

Section 602: New provision.

TITLE VII

DEPARTMENT OF DEFENSE ADMINISTRATIVE PROVISIONS

Section 701: Amends title 10, United States Code,
by adding a new chapter dealing with
Department of Defense undercover
intelligence activities.

**INTELLIGENCE AUTHORIZATION ACT FOR
FISCAL YEAR 1984**

COST ANALYSIS

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: Fiscal Year 1984 authorizations are contained in the classified Schedule of Authorizations.

Section 102: Cost analysis not applicable.

Section 103: Cost contingent upon exercise of permissive authority.

Section 104: Cost analysis not applicable.

Section 105: Cost analysis not applicable.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201: Cost analysis not applicable.

Section 202: Cost analysis not applicable.

Section 203: Enactment of Section 203 will require no new federal expenditures. Under this legislation, the Intelligence Community Staff will expend the same amount from its appropriations for the compensation of its Director or Deputy Director whether that Director or Deputy Director is a civilian or an officer of the armed forces.

TITLE III

**CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM**

**Section 301: The fiscal year 1984 authorization
is \$86,300,000.**

TITLE IV

ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

Section 401: The amendment proposed by this section would enable the Agency to take steps to increase the effectiveness of certain personnel recruitment efforts, resulting in resource savings to the government.

Section 402: The amendment proposed by this section would expand the pool of eligible recipients of CIA and Intelligence Community Staff awards. The amendment would not, however, authorize the expenditure of any additional funds beyond those already available for such purposes. Thus, no additional costs to the government would result.

Section 403: Enactment of this section would authorize the transfer of up to \$3,000,000 to the State of Virginia for road design and construction.

TITLE V

INTELLIGENCE PERSONNEL PROTECTION

Section 501: Cost analysis not applicable.

TITLE VI

GENERAL PROVISIONS

Section 601: Cost contingent upon enactment of future legislation.

Section 602: Technical compliance with section 607 of Public Law 93-344 only; cost analysis not applicable.

TITLE VII

DEPARTMENT OF DEFENSE ADMINISTRATIVE PROVISIONS

Section 701: Enactment of this section should not result in any additional cost to the Department of Defense or the government. Costs of contemplated activities authorized by this section are expected to be nominal and readily absorbable.